TEH BON HEOW

v.

PP

HIGH COURT MALAYA, ALOR SETAR
ZAMANI A RAHIM JC
[CRIMINAL REVISION NO: 43-07-2008]
29 JANUARY 2009

ROAD TRAFFIC: *Dangerous driving - Causing death by reckless or dangerous driving - Suspension of driver's driving licence pursuant to s. 41(5) Road Transport Act 1987 - Rationale of s. 41(5) Road Transport Act 1987 - Whether all classes of driver's driving licence ought to be suspended and confiscated - Whether driver ought to be allowed to retain the driving licence for classes other than the class related to the offence charged - Road Transport Act 1987, s. 41(5)*

The applicant was charged with reckless and dangerous driving under s. 41(1) of the Road Transport Act 1987 ('the Act') for causing the death of two persons whilst driving a motorlorry. He claimed trial when the charge was read and explained to him in the Magistrate's Court on 25 March 2007, at which time the Magistrate ordered the suspension and confiscation of the applicants licence (in respect of classes E, D and B2). The matter was adjourned and eventually fixed for trial on 14 May 2009. The applicant's counsel subsequently applied to the Magistrate's Court to have the applicant's licence in respect of classes B2 and D returned but the application was refused. Counsel then wrote to the High Court for a revision under s. 323 of the Criminal Procedure Code. In the High Court, counsel submitted that the applicant's licence in respect of classes B2 and D should not have been suspended and ought to be returned to him as they were not on the same footing as his motorlorry E licence. Counsel pleaded that the applicant, who had two school going children badly needed his class B2 and D licence to drive his family and to seek other employment since he could not return to work as a lorry driver due to the suspension of his class E licence.

Held:

(1) The confiscation and suspension of the applicant's licence was made under s. 41(5) of the Act. The idea behind s. 41(5) is to keep an offending driver off the road forthwith upon first reading of the charge until his legal guilt is determined one

A way or the other. This is because his presence on the road would constitute a potential danger to other road users. This suspension would only be temporary. If the driver is found guilty and convicted, his driving licence for the class for which he is charged will be suspended but his driving licence for
B other classes will be unaffected. *PP v. Harmenderpall Singh Jagara Singh* (foll). (para 19)

(2) If the offending driver is allowed to retain the driving licence for other classes (other than the class for which he
C is charged), the purpose of keeping him off the road would be defeated. He may still be on the road driving other type of vehicles which continue to pose danger to other road users. (para 19)

D **Case(s) referred to:**
Hari Ram Seghal v. PP [1980] 1 LNS 116 ***(refd)***
PP v. Harmenderpall Singh Jagara Singh [2007] 2 CLJ 577 CA ***(foll)***

Legislation referred to:
Criminal Procedure Code, s. 323
E Road Transport Act 1987, ss. 32, 41(1), (5), 42

For the applicant - Ashok Kumar; M/s VP Nathan & Partners
For the respondent - Ridha Abdah Subri DPP

Reported by Andrew Christopher Simon

F

JUDGMENT

Zamani A Rahim JC:

G **[1]** A letter dated 4 November 2008 from Tetuan V.P. Nathan & Partners was referred to me wherein the said solicitors requested me to exercise my revisionary powers to have the applicant's driving licence of classes D and B2 which was confiscated and suspended by the learned Magistrate at Sungai
H Petani, be returned to the applicant for reasons hereunder stated.

[2] The power of revision is given to the judge under s. 323 of the Criminal Procedure Code. The section was critically examined by Wan Yahya J in *Hari Ram Seghal v. PP* [1980] 1 LNS 116. It reads:

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A judge may call for and examine the record of any proceeding before any inferior Criminal Court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such interior court.

[3] Pursuant to the above provision, I have caused the relevant notes of proceedings to be transmitted to me. Upon examining the record of proceedings, the chronological events may be summarized as follows. The applicant was charged on 25 March 2007 with an offence of reckless and dangerous driving which caused the death of two persons namely Azri bin Md Akib and Adam Afiq bin Azri, an offence under s. 41(1) of the Road Transport Act 1987 (RTA) *vide* Sungai Petani Magistrate's Court Case No. 83-305-07. The charge reads as follows:

BAHAWA kamu pada 3.11.2006, lebih kurang jam 11.35 am, bertempat di atas jalan raya di KM 111.9 Lebuhraya dari arah selatan ke utara, dekat Plaza Tol Sungai Petani Selatan, Sungai Petani, di dalam Daerah Kuala Muda, di dalam Negeri Kedah Darul Aman, kamu sebagai pemandu kenderaan berdaftar lori No: KAB 2203 telah memandu di atas jalan raya secara melulu dan merbahaya kepada pengguna jalan raya yang lain dan orang awam menyebabkan kematian kepada (1) Azri bin Md Akib, KP No: 770517-02-6061 dan (2) Adam Afiq bin Azri, KP No: 041202-02-0335, oleh yang demikian, kamu telah melakukan satu kesalahan di bawah Seksyen 41(1) Akta Pengangkutan Jalan, 1987 dan boleh dihukum di bawah Akta yang sama.

[4] The records also stated the charge was read and explained to the applicant. He understood it and claimed to be tried. The notes of proceedings recorded by Puan Ainy Suhailah binti Yunus, the learned Magistrate showed the following notations:

lesen digantung sehingga bicara selesai

[5] The applicant's case was adjourned to 26 April 2007 for mention as he wished to get the services of counsel. In the meantime, the prosecuting officer suggested that the applicant be released on bail in the sum of RM6,000 with one surety. The applicant, who was unrepresented then, prayed that the bail amount be reduced as his earnings were unstable and low. His wife was not employed. The applicant was subsequently released on bail in the sum of RM4,000 with his brother stood as surety.

[6] The records too disclosed that the case which was scheduled to be heard on 24 June 2007 was adjourned to 29 April 2007. There were several postponements thereafter for diverse reasons, amongst others, the applicant had made representations to the learned Deputy Public Prosecutor (DPP) for a reduced charge, presumably under s. 42 RTA and was still awaiting for the reply.

[7] Subsequently, on the mention date on 30 October 2008 the Magistrate Court was informed that the prosecution intended to proceed against the applicant with the original charge under s. 41(1) RTA. In other words, the applicant's representation for an amended reduced charge was not acceded to by the learned DPP.

[8] Be that as it may, the counsel for the applicant had made an application to have the applicant's driving licence of classes B2 and D which was confiscated and suspended on the first reading of the charge on 25 March 2007, be returned to the applicant. The driving licence of classes B2 and D had nothing to do with the charge, said the counsel. The applicant was charged in respect of reckless and dangerous driving, an offence under s. 41(1) RTA while he was driving the motor lorry, KAB 2203 of class E licence. The application was made before another Magistrate, Puan Noor Farah Hazwani Osman. She made the decision as follows:

> Perintah untuk pergantungan lesen memandu OKT iaitu lesen E, D dan B2 – dibuat pada 26.4.2007 (ie, it should read 25.4.2007) oleh Puan Ainy Suhailah, Majistret terdahulu iaitu Majistret (1) Sungai Petani dan segala 'reverse order' atau sebagainya hanya boleh dibuat oleh di Mahkamah Tinggi, Alor Star.

[9] In other words, the new Magistrate did not propose to disturb the decision of confiscation and suspension of the applicant's driving licence made by her predecessor. Anyway, the applicant's case was fixed for trial on 14 May 2009.

[10] By a letter dated 21 January 2008, the Registrar of the Magistrate's Court at Sungai Petani had sent the applicant's driving licence to the Pengarah, Jabatan Pengangkutan Jalan, Alor Star for suspension until the disposal of this case. The said letter dated 21 January 2008 is reproduced below.

Ruj. Tuan : MMSP:83-305/2007
Ruj. Kami :
Tarikh : 21 Januari, 2008

Pengarah,

Jabatan Pengangkutan Jalan,
Alor Star,
Kedah Darul Aman.

Tuan /Puan,

Mahkamah Majistret (1) Sg. Petani
Lesen Memandu Yang Digantung Sementara Menunggu Perbicaraan Di Bawah Seksyen 41(5) APJ 1987

Merujuk kepada perkara di atas, bersama-sama ini disertakan lesen memandu untuk digantung sehingga kes selesai dan untuk tindakan tuan selanjutnya.

Nama:	Teh Bon Heow @ Teh Bon Khee
Alamat:	No. 16, Jalan Besar, Pekan Yan, Yan, Kedah.
No. Kes:	83-305/2007
No. K/Pengenalan:	590127-02-5049
No. Siri Lesen:	AS 265798 (25.02.2007 - 25.02.2008)
Kenderaan:	Motorlori KAB 2203
Seksyen:	Seksyen 41(1) APD 1987
Tarikh Lesen Digantung:	15.01.2008 sehingga kes selesai
Tarikh Bicara:	01.06.2008

2. Sila akui penerimaannya.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

... t.t ...

Pendaftar,
Mahkamah Majistret,
Sungai Petani,
Kedah Darul Aman.

[11] On 12 January 2009, the applicant's case came before me by way of revision. The counsel for the applicant had repeated before me his request before the learned Magistrate's Court. The counsel conceded that the applicant's driving licence of class E should be confiscated and suspended as he was driving recklessly and dangerously the motor lorry which caused in the death of Azri bin Md Akib and Adam Afiq bin Azri and resulted in his prosecution for an offence under s. 41(1) RTA. The driving licence for other classes, as in this case for the classes B2 and D, were irrelevant to the charge and should not be on the same footing as class E, the subject of confiscation and suspension under s. 41(5) RTA.

[12] The learned counsel went on to say that the applicant could not return to work as a lorry driver due to the suspension of class E licence. The applicant, therefore, in dire need of his driving licence for class B2 and D for purposes of driving his family and also to seek another employment. The applicant too had two school going children.

[13] The order of confiscation and suspension was made by the learned Magistrate pursuant to s. 41(5) RTA. It provides as follows:

> 41. Causing death by reckless and dangerous driving
>
> (5) Notwithstanding anything in any written law for the time being in force, the court before which a person is charged with an offence under this section shall order the immediate **confiscation of the driving licence** of that person and shall order the **suspension of the licence** commencing from the date charge is first read to that person and such suspension shall have effect.

[14] The above provision has made reference to s. 32 which the relevant part read as follows:

> 32. Suspension of driving licence upon disqualification
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> (3) If any person who under this Part is disqualified from the holding or obtaining a driving licence applies for or obtains a driving licence while he is so disqualified or if any such person while he is so disqualified drives a motor vehicle or, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, that person shall be guilty of an offence and shall on conviction be liable:
>
> (a) …
>
> (b) …

[15] The construction and the meaning of s. 41(5) was made in the Court of Appeal case of *PP v. Harmenderpall Singh Jagara Singh* [2007] 2 CLJ 577 wherein Denis Ong JCA said at p. 608 and 609:

> By way of construction and its meaning, s. 41(5) applies specifically to a class of cases where the person is charged with an offence under s. 41 and targets his driving licence by immediate and compulsory confiscation and its suspension by the court notwithstanding anything in any written law for the time being in force. The words "such suspension shall have effect as if the suspension is the suspension referred to in s. 32" in s. 41(5)(b) refer to the suspension of the driving licence by the court and also to the suspension of the driving licence by the Director General under ss. 35 and 36 and by such phrase namely, "as is the suspension is ..." in s. 41(5)(b), a device of referential legislation, treats as or deems a driving licence suspended by the court to be the same as one suspended by the Director General under ss. 35 and 36 (see s. 41(5A) in force from 28 April 2005 P.U.(B) 156/2005) and of no effect during the time of suspension as provided in s. 32(2) of Act 333. But unlike the suspension by the General Director, s. 41(5)(a) prescribes when the duration of the confiscation and suspension by the court is to start and lapse. Section 41(5)(a) is a specific provision to empower the court to order suspension of the driving licence of the driver from the date of first reading of the charge under s. 41(1) to the final decision on the charge, obviously referring to the mention and trial period in the Magistrate's Court until it pronounces its decision to discharge, acquit or to convict the accused person of the charge as the case may be, signifying clearly that the suspension is intended to be an interim measure only and "specific" because the exercise of the court's power to order immediate confiscation and suspension of the driving licence is limited specifically to the case of a person charged with an offence under s. 41(1).

[16] His Lordship went on to say at p 611:

> The legal consequence of confiscation and suspension under s. 41(5) read with s. 32 and s. 38 is **temporarily to stop the driver from driving a motor vehicle on the road under any other driving licence** issued by any other authority or otherwise until his legal guilt with reference to the charge under s. 41(1) is actually decided one way or the other by the court.

[17] In this case in support of his application, the learned counsel referred the court to s. 21 of the Motor Vehicle Act and said that in the event of a conviction, the suspension was in relation to the class of the driving licence to which he was charged. Though the applicant was charged for reckless and dangerous driving of motor

A lorry under s. 41(1), he was yet to be found guilty. To confiscate and suspend the driving licence for the classes B2 and D (other than for class E) was unfair and had occasioned a miscarriage of justice. The counsel pleaded that the driving licence for the class B2 and D be restored to the applicant.

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[18] As stated earlier, the confiscation and suspension of the applicant's driving licence was made under s. 41(5) RTA. Sub-section (5) was inserted into s. 41 RTA (Amendment Act 1999 (Act A 1065/99) and came into force on 18 April 2000 (P.U (B) C 94/2000). The intention of Parliament to introduce this provision, that is, s. 41(5) was stated by James Foong JCA in *Harmenderpall Singh Jagara Singh, supra* in the following words:

> This means of distinction was very much in the mind of the legislature when s. 41(5) was introduced in Parliament. The D Hansad's report on the Parliamentary debates of 13 and 26 July 1999 disclosed that Parliament intended this provision to deter those who desire to drive recklessly and dangerously to a degree that causes death to a third party by suspending their driving licence immediately upon being charged to prevent a repeat of a E similar incident.

[19] The idea behind s. 41(5) is to keep the offending driver off the road forthwith upon first reading of the charge until his legal guilt is actually decided one way or the other. This is because his F presence on the road is a potential danger to other road users. The suspension for all classes is temporary. If he is found guilty and convicted, his driving licence for the class for which he is charged will be suspended but his driving licence for other classes will be unaffected. If the offending driver is allowed to retain the driving licence for other classes (other than the class for which he G is charged), the purpose of keeping him off the road is defeated. He may still be on the road driving other type of vehicles for example, motor car and motorcycle, which continue to pose danger to other road users.

H **[20]** For the above reasons, in the exercise of my discretion, I find that the learned Magistrate has not erred when she made the order on the first reading of the charge to confiscate and suspend the driving licence of the applicant under s. 41(5) RTA for all classes, E, B2 and D until the completion of his case.

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